

BILL LOCKYER, Attorney General  
of the State of California  
ADRIAN K. PANTON, State Bar No. 64459  
Supervising Deputy Attorney General  
ELAINE GYURKO  
Senior Legal Analyst  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, California 90013  
Telephone: (213) 897-4944  
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

LAMONT OTIS IVERY  
7646 Sandpiper Court  
Rancho Cucamonga, California 91720

Respiratory Care Practitioner License No. 22791

Respondent.

Case No. R-1974

**ACCUSATION AND  
PETITION TO REVOKE  
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about January 30, 2003, the Respiratory Care Board issued Respiratory Care Practitioner License No. 22791 to Lamont Otis Ivery (Respondent). This license was in effect at all times relevant to the charges brought herein, and will expire on January 31, 2006, unless renewed.

3. In a disciplinary action entitled "In the Matter of the Statement of Issues Against Lamont Otis Ivery," Case No. S-311, the Board issued a decision effective January 30,

1 2003, in which respondent was issued a probationary license for a period of three (3) years with  
2 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated  
3 herein by reference.

#### 4 JURISDICTION

5 4. This Accusation and Petition to Revoke Probation is brought before the  
6 Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the  
7 following laws. All section references are to the Business and Professions Code unless otherwise  
8 indicated.

9 5. Section 3710 of the Code states: "The Respiratory Care Board of  
10 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,  
11 the Respiratory Care Practice Act]."

12 6. Section 3718 of the Code states: "The board shall issue, deny, suspend, and  
13 revoke licenses to practice respiratory care as provided in this chapter."

14 7. Section 3754 of the Code states: "The board may deny an application for,  
15 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon,  
16 a license in any decision made after a hearing, as provided in Section 3753."

17 8. Section 3750 of the Code states:

18 "The board may order the suspension or revocation of, or the imposition of  
19 probationary conditions upon, a license issued under this chapter, for any of the following  
20 causes:

21 " . . .

22 "(g) Conviction of a violation of any of the provisions of this chapter or of any  
23 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
24 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
25 violate any provision or term of this chapter or of any provision of Division 2 (commencing  
26 with Section 500). . . ."

27 9. Section 3750.5 of the Code states:

28 "In addition to any other grounds specified in this chapter, the board may deny,

1 suspend, or revoke the license of any applicant or license holder who has done any of the  
2 following:

3 “(a) Obtained or possessed in violation of law, or except as directed by a licensed  
4 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished  
5 or administered to another, any controlled substances as defined in Division 10  
6 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug  
7 as defined in Article 2 (commencing with section 4015) of Chapter 9.

8 “(b) Used any controlled substance as defined in Division 10 (commencing with  
9 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article  
10 2 (commencing with section 4015) of Chapter 9. . . .”

#### 11 COST RECOVERY

12 10. Section 3753.5, subdivision (a) of the Code states:

13 “In any order issued in resolution of a disciplinary proceeding before the board, the  
14 board or the administrative law judge may direct any practitioner or applicant found to have  
15 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
16 investigation and prosecution of the case.”

17 11. Section 3753.7 of the Code states:

18 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
19 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
20 administrative, filing, and service fees.”

21 12. Section 3753.1, subdivision (a) of the Code states:

22 “An administrative disciplinary decision imposing terms of probation may include,  
23 among other things, a requirement that the licensee-probationer pay the monetary costs associated  
24 with monitoring the probation.”

#### 25 FIRST CAUSE TO REVOKE PROBATION

26 (Biological Fluid Testing)

27 13. At all times after the effective date of Respondent’s probation, Condition 2  
28 stated:

1 Respondent, at his expense, shall participate in random testing, including, but not  
2 limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle  
3 testing, or a drug screening program approved by the Board. Test costs range from \$21.00  
4 to \$200.00 each. The length of time shall be for the entire probation period. The  
5 frequency and location of testing will be determined by the Board.

6 At all times, Respondent shall fully cooperate with the Board or any of its  
7 representatives, and shall, when directed, submit to such tests and samples for the detection  
8 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances.

9 If Respondent is unable to provide a specimen in a reasonable amount of time from  
10 the request, while at the work site, Respondent understands that any Board representative  
11 may request from the supervisor, manager or director on duty to observe Respondent in a  
12 manner that does not interrupt or jeopardize patient care in any manner until such time  
13 Respondent provides a specimen acceptable to the Board.

14 Failure to submit to testing or appear as requested by any Board representative for  
15 testing, as directed shall constitute a violation of probation and shall result in the filing of an  
16 accusation and/or a petition to revoke probation against Respondent's respiratory care  
17 practitioner license.

18 14. Respondent's probation is subject to revocation because he failed to comply  
19 with Probation Condition 2, referenced above. The facts and circumstances regarding this  
20 violation are as follows:

21 As part of respondent's random drug testing program, he was required to telephone  
22 Compass Vision, Inc. (CVI) on a daily basis to determine if he needed to provide a specimen for  
23 testing and analysis. Respondent failed to telephone CVI on the following dates:  
24 August 19, 21 through 30, September 3, 5, 6, 11 through 13, 16, 24, 27, and October 11, 2004,  
25 January 3, 4, 9, 25, 30, and February 6 and 12, 2005.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3  
4

5  
6  
7  
8

9  
10  
11  
12

13

14

15

16  
17  
18

19

20

21  
22  
23

24  
25  
26  
27

## 28

(Obey All Laws)

17. At all times after the effective date of Respondent's probation, Condition 5 stated:

Respondent shall obey all laws, whether federal, state, or local. Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the Board in writing within 14 days of any incident resulting in his arrest, or charges filed against, or a citation issued against Respondent.

18. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are as follows:

Respondent violated sections 3750, subdivision (g), and 3750.5, subdivisions (a) and (b) of the Code in that he possessed, administered to himself, and used the controlled substance marijuana. The facts and circumstances, set forth in Paragraph 16 of this Accusation and Petition to Revoke Probation, are incorporated herein by reference.

FOURTH CAUSE TO REVOKE PROBATION

(Probation Monitoring Costs)

19. At all times after the effective date of Respondent's probation, Condition 8 stated:

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he shall be required instead to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and

1 evidence of why the Respondent is unable to make such payment(s) must accompany this  
2 submission.

3 Respondent understands that failure to submit costs timely is a violation of  
4 probation and submission of evidence demonstrating financial hardship does not preclude  
5 the Board from pursuing further disciplinary action. However, Respondent understands  
6 providing evidence and supporting documentation of financial hardship may delay further  
7 disciplinary action.

8 In addition to any other disciplinary action taken by the Board, an unrestricted  
9 license will not be issued at the end of the probationary period and the respiratory care  
10 practitioner license will not be renewed, until such time all probation monitoring costs have  
11 been paid.

12 The filing of bankruptcy by Respondent shall not relieve the Respondent of his  
13 responsibility to reimburse the Board for costs incurred.

14 20. Respondent's probation is subject to revocation because he failed to comply  
15 with Probation Condition 8, referenced above. The facts and circumstances regarding this  
16 violation are as follows:

17 Respondent is delinquent in his probation monitoring costs in the amount of  
18 \$688.00 for the months of September 2004, through April 2005.

19 FIRST CAUSE FOR DISCIPLINE

20 (Obtained or Possessed or Administered a Controlled Substance)

21 21. Respondent is subject to disciplinary action under sections 3750,  
22 subdivision (g) and 3750.5, subdivision (a) of the Code, in that he obtained or possessed or  
23 administered to himself the controlled substance marijuana. The facts and circumstances, set forth  
24 in Paragraph 16 of this Accusation and Petition to Revoke Probation, are incorporated herein by  
25 reference.

26  
27  
28 SECOND CAUSE FOR DISCIPLINE

(Use of a Controlled Substance)

22. Respondent is subject to disciplinary action under sections 3750, subdivision (g) and 3750.5, subdivision (b) of the Code, in that he used the controlled substance marijuana. The facts and circumstances, set forth in Paragraph 16 of this Accusation and Petition to Revoke Probation, are incorporated herein by reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking the probation that was granted by the Respiratory Care Board of California in Case No. S-311;

2. Revoking or suspending Respiratory Care Practitioner License No. 22791 issued to Lamont Otis Ivery;

3. Ordering Lamont Otis Ivery to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if probation is continued or extended, the costs of probation monitoring;

4. Taking such other and further action as deemed necessary and proper.

DATED: May 6, 2005

Original signed by Liane Zimmerman for: \_\_\_\_\_  
STEPHANIE NÚÑEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant